

IN THE MATTER OF LICENSE NO. 260654 MERCHANT MARINER'S DOCUMENT BK  
NO. 170978 AND ALL OTHER SEAMAN DOCUMENTS

Issued to: GEORGE F. BRADY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1616

GEORGE F. BRADY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 24 August 1966, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Appellant's seaman documents for four months on nine months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as Chief Engineer on board the United States SS TRUSTCO under authority of the license above described, on or about 21 August 1964, Appellant wrongfully assaulted and battered with his hands a fellow crew member, Second Mate Deimel, and wrongfully created a disturbance aboard said vessel.

At the hearing, on 1 March 1966 and various subsequent dates, Appellant was represented by professional counsel. At the outset of the hearing, Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence a certification of shipping articles showing Appellant to be a member of the crew at the time alleged in the specification; certified copies of entries dated 21 August 1964 in the Official Log Book, including signed because of crew members; testimony of the master, and interrogatories and cross-interrogatories completed by witnesses.

In defense, Appellant testified in his own behalf and denied that at any time he was the aggressor.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant suspending all documents, issued to Appellant, for a period of four months on nine months' probation.

The entire decision was served on 25 August 1966. Appeal was

timely filed on 14 September 1966.

#### FINDINGS OF FACT

On 21 August 1964, Appellant was serving as Chief Engineer on board the United States SS TRUSTCO and acting under authority of his license while the ship was in the port of Rota, Spain. Appellant came to the officers' saloon for dinner shortly after 1700 and became angry when he informed that dinner had already been served, particularly since he had been refused lunch when he appeared at approximately 1230 the same day. When he directed some remarks to the messman to the effect that the master and chief mate would receive dinner if they appeared late, the second mate took exception to the remarks. When the second mate got up from the table and started for the door after finishing his meal, Appellant stood up and the two men started pushing and shoving each other. They were separated by other crew members and left the saloon by different routes.

In the meantime, crew members went to get the master, and when they returned, the two men were scuffling on the catwalk forward of the afterhouse just outside the door of Appellant's room. The master sent the second mate amidships and told Appellant to go to the hospital because he was bleeding about the nose. Appellant disagreed with the necessity of going to the hospital and was taken there bodily by several crew members while the master went forward to make arrangements with the pilot for departure from port. When the master was informed that Appellant had left the hospital, the master returned to the scene and finding him still recalcitrant, handcuffed him to the railing of the catwalk, with the assistance of crew members, to prevent further disturbance until the pilot left the vessel.

Appellant had been serving in the U.S. merchant marine for 37 years. His record of prior misconduct consists of 12-months suspension on 12 months' probation in 1958 for failure to observe good engineering practice.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision and order are contrary to law and evidence and the following exceptions are made: prejudicial delay in serving charges one and one-half years after the alleged violations; admission of the official log book entries which were not made in strict compliance with 46 USC 702; granting of continuances to the Coast Guard for the purpose of taking depositions, thereby depriving Appellant of a speedy hearing; lack of substantial evidence of a reliable and probative character to

support the Hearing Examiner's findings; and the severity of the order.

APPEARANCE:       Levinson & Friedman of Seattle, Washington, by  
                      Roberts D. Duggan, Esq.

#### OPINION

In order for the second mate to leave the saloon after finishing his meal, it was necessary for him to pass within four feet of Appellant. Appellant's temper had been aroused and he stood up as the second mate approached his end of the table. This was interpreted as an aggressive act, and the men began to push one another. Each man contended that the other started the fight, but none of the witnesses could testify as to who started it. The examiner found that the second mate's testimony was uncontroverted as to the fact that the person charged started the shoving.

After the men were separated, the second mate took the outside route forward to avoid passing Appellant's room, but when he reached the forward end of the afterhouse, Appellant was on the catwalk and the fight resumed, again without witnesses as to the initiation of the fight. The second mate stated that Appellant came at him swinging; this was denied by Appellant. All witnesses agree that there was physical combat, and the circumstances point to Appellant as the aggressor.

The second specification relates to the events beginning with the second encounter between the men and ending with the handcuffing of Appellant to the railing. Appellant's actions and belligerent attitude made it necessary for the master and several crewmen to become involved in quieting the disturbance, thus disrupting the orderly routine of the ship at a time when attention of the crew should have been directed toward performing their duties in getting the ship underway.

The charge and specifications were served within the time limit specified in the regulations (46 CFR 137.05-23). Any delays in bringing the hearing to a close are attributable to the usual difficulties of contacting merchant seamen. The interrogatories and cross-interrogatories were answered without undue delay, and Appellant was represented at all times by counsel. The Examiner accepted the entries in the Official Log Book as substantial evidence, but the charge and specifications were found proved upon consideration of all the evidence, including depositions and testimony of witnesses. The circumstances leading up to this incident and Appellant's length of service and prior good record were taken into consideration in determining an order appropriate to the charge and specifications.

ORDER

The order of the Examiner dated at Seattle, Washington, on 24 August 1966 is AFFIRMED.

P.E. TRIMBLE  
Vice Admiral, U.S. Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 17th day of May 1967.

ASSAULT (INCLUDING BATTERY)  
aggressor

DISTURBANCE  
continuing conduct  
foreign port